

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**3:08-cv-569**

**ASSURANT, INC.,** )  
                  **Plaintiff,** )  
                                  ) )  
                  **vs.** ) )  
                                  ) )  
**MEDASSURANT, INC.,** )  
                  **Defendant.** )  
\_\_\_\_\_ )

**MEMORANDUM AND ORDER**

**THIS MATTER** is before the Court on the defendant's Motion to Dismiss Defendant's Counterclaim (Doc. No. 18). The magistrate judge's Memorandum and Recommendation ("M&R") (Doc. No. 25) recommended that the motion be denied as moot because defendant filed an Amended Counterclaim on April 21, 2009 (Doc. No. 22) and plaintiff filed a new Motion to Dismiss pertaining to the Amended Counterclaim on May 6, 2009 (Doc. No. 23). The parties were advised that objections were to be filed in writing within ten (10) days after service of the magistrate judge's decision. (Doc. No. 17: M & R at 7). The time for filing objections has since passed and no objections have been filed by either party in this matter. For the reasons stated below, the Court **DENIES** the defendant's Motion to Dismiss.

**I. STANDARD OF REVIEW**

The Federal Magistrate Act provides that a district court "shall make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); Camby v. Davis, 718 F.2d 198, 198 (4th Cir. 1983). "By contrast, in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310,

315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

## II. CONCLUSION

Accordingly, the Court finds that the magistrate judge's findings of fact are supported by the record and his conclusions of law are consistent with and supported by current case law. See Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982) (holding that only a careful review is required in considering a memorandum and recommendation absent specific objections). Thus, the Court hereby accepts the M&R of Magistrate Judge Keesler and adopts it as the final decision of this Court for all purposes relating to this case.

**IT IS, THEREFORE, ORDERED** that the defendant's Motion to Dismiss (Doc. No. 18) is **DENIED**.

Signed: June 22, 2009

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
Chief United States District Judge

